

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**DANIEL W. NECKER a/k/a Daniel W.
Necker, Jr.,**

Defendant.

§
§
§
§
§
§
§
§
§
§

Civil Action No. **3:15-CV-1796-L**

MEMORANDUM OPINION AND ORDER

Before the court is the United States’ Motion for Default Judgment, filed October 6, 2015. After careful consideration of the motion, appendix, record, and applicable law, the court **grants** the United States’ Motion for Default Judgment.

I. Background

The United States (“Plaintiff” or “United States”) filed Plaintiff’s Complaint (“Complaint”) on May 23, 2015, against Daniel W. Necker a/k/a Daniel W. Necker, Jr. (“Defendant” or “Necker”). This action arises from the failure of Necker to make the required payments on a loan he obtained in October 1997. The loan was disbursed for \$1,313 and \$2,000 on January 26, 1998, at a variable rate of interest to be established annually by the Department of Education. The loan was guaranteed by United Student Aid Funds, Inc. and reinsured by the Department of Education under loan guaranty programs authorized under Title IV-B of the Higher Education Act of 1965, as amended, 20 U.S.C. 1071 *et seq.* (34 C.F.R. Part 682). After demand of payment by the United States, Necker defaulted on the loan on August 30, 2001.

Necker was served with a copy of the summons and Complaint on September 3, 2015. Defendant was required to answer or otherwise respond to the Complaint by September 24, 2015, 21 days after service of the summons and Complaint. *See* Fed. R. Civ. P. 12. To this date, Necker has not answered or otherwise responded to the Complaint.

On October 1, 2015, the United States requested the clerk of court to enter a default against Necker, and the clerk entered default against Necker the same day. Plaintiff now requests the court to enter a default judgment against Necker and award it damages and applicable interest as a result of his default.

II. Discussion

A party is entitled to entry of a default by the clerk of the court if the opposing party fails to plead or otherwise defend as required by law. Fed. R. Civ. P. 55(a). Under Rule 55(a), a default must be entered before the court may enter a default judgment. *Id.*; *New York Life Ins. Co. v. Necker*, 84 F.3d 137, 141 (5th Cir. 1996). The clerk of court has entered a default against Necker. The court also finds, based upon the information in the record, that Defendant is not a minor, incompetent person, or member of the United States military.

Necker, by failing to answer or otherwise respond to Plaintiff's Complaint, has admitted the well-pleaded allegations of the Complaint and is precluded from contesting the established facts on appeal. *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (citations omitted). Based on the well-pleaded allegations of Plaintiff's Complaint, which the court accepts as true, and the record in this action, the court determines that Necker is in default and that the United States is entitled to a default judgment and appropriate damages.

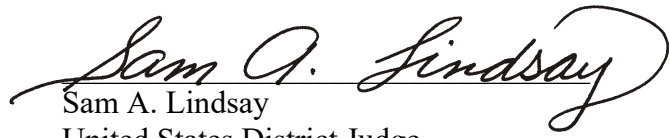
Based on the record, the total amount that Necker owed the United States as of December 10, 2014, was \$4,384.89 (\$2,842.18 in principal and \$1,542.71 in interest). Interest accrues on the

principal at the rate of \$.24 per day. The number of days from December 10, 2014, to October 6, 2015, is 300, which results in additional interest in the amount of \$72. Therefore, the total amount of judgment to which the United States is entitled is **\$4,456.89**.

III. Conclusion

For the reasons herein stated, the court **grants** the United States' Motion for Default Judgment, and Plaintiff is entitled to and shall recover from Defendant the amount of **\$4,456.89**. The court will enter judgment by separate document, as required by Federal Rule of Civil Procedure 58, in the amount stated in favor of the United States.

It is so ordered this 6th day of October, 2015.


Sam A. Lindsay
United States District Judge